

***Section 205 Delegable Functions Team
Minutes - October 23 & 24, 1996***

Participants:

Jim Detlefs, MMS
Paul Kruse, Wyoming
Maurice Lierz, Western States Land Commissioners Association
Dave Steiber, MMS
Spencer Reid (first day only), Western States Land Commissioners Association
Cecelia Williams, MMS
Kermit Weatherbee, BLM (for Sherri Thompson)
Charles Whitsel, Western States Land Commissioners Association
John Russo, MMS
Dave Loomis, STRAC
Jim Carter (2nd day only), Western Governors' Association
Clare Onstad, MMS
Bob Prael, MMS

Recorder: Bob Prael

Action Items:

- Answer the question on Section 8G inspections - Are they delegable? If so, OMM team member will be required.
- Discuss the issue of why RIK administrative fees are not shared with States.
- Determine who in Oklahoma other than the Governor will receive an outreach letter directly versus receiving a courtesy copy.
- Clare Onstad will send out final draft of outreach letter to all team members on 10/28/96. Team members will provide comments by the following day.
- We will try to have the outreach letter issued by 11/1/96. A copy of the letter and a list of everyone who it was mailed to will be provided to all team members.
- The Western Governors Association and STRAC will follow up with States mailed the outreach letter to make sure a contact name is obtained.
- Jim Detlefs will check with MMS management to ensure that the approach of a broad regulation (following the format of the audit delegation language - 30 CFR 229) with specifics listed in other documents is acceptable.
- MMS team members will research funding questions. MMS management will be contacted if needed.
- Jim Detlefs will contact Sherri Thompson to make sure she is willing to be a part of the subgroup on inspections.

- By 11/27/96, the subgroups should have the regulatory framework completed and faxed to all other team member.
- Telecom with all team members at 1:00 on 12/2/96, to discuss regulatory framework.
- Telecom with all team members during week of 12/16, if needed, to discuss outreach meeting responses.

Minutes of prior meeting:

The minutes of the October 10 & 11, 1996, meeting were approved with one small change (under standard baseline, volume variance was listed twice - it should read volume variance and value variance).

Update on SOL/Policy Issues:

Jim Detlefs briefed the group on the following policy decisions made by the Director, MMS:

- Solid minerals and geothermal products can be delegated to States under RSFA. Outreach is starting with the solid mineral industry.
- Section 8G lands can be delegated to States under RSFA. A question was raised concerning the inspection of Section 8G lands. This question will be researched.
- Acquired land leases can be delegated to States under RSFA. Functions delegated to a State will include all the lands in a State, there will not be a separation where a State just takes one type of lease and not another. There may be anomalies that have to be reviewed such as international type lease arrangements.
- Collections will not be delegated to a State. This policy decision is based on the discussions held concerning enactment of RSFA, the drafts of RSFA, and the law itself which states that payments will go to the Treasury.

States will receive information on payments received by MMS for their States. This will be accomplished by having industry identify payments made for a delegated State. Currently, payors use a "3A" number to identify payments to a specific document. In the future, this "3A" number will have to identify the corresponding State document. Industry will have to make some changes based on RSFA. Separate reporting will have to be made to some States with the remainder of reporting to MMS. Separate payments, or more detailed identification of payments will also have to be made.

Awarding RIK contracts and deciding when to have RIK sales will not be delegated to a State. Processing reports for RIK leases, error correction, and billing are delegable functions. In addition, it is felt that prior to an RIK sale, States will be consulted on the leases to include in the sale. A question was raised concerning the administrative fee that is collected. Currently this fee goes directly to the Treasury and is not shareable with States. The question was, why isn't the administrative fee shared with the appropriate State?

Enforcement was defined as those actions that occur after the issuance of orders. Given this definition, enforcement is not delegable to a State. Examples of this type of enforcement are final agency decisions, Notices of noncompliance, penalties, and litigation.

The Director knows that States may not agree with some of these decisions. However, the decisions had to be made to allow the 205 delegation team to move forward and not waste time on issues that are not delegable. The Director is aware that States may take other measures to change some of these decisions.

Outreach letter to Governors:

A draft of the letter had been previously circulated and commented on. Comments were incorporated into the revised letter handed out at the meeting. The following points were discussed:

- The purpose of the letter is to tell States what the RSFA is, what the 205 delegation team is doing, the roles of MMS and BLM, and the future plans (time schedule and outreach sessions).
- The team decided to send one letter to all 38 Governors and courtesy copy everyone else including other elected officials and State representatives who are involved in receiving funds from MMS. Due to special circumstances, we will also send a letter to an elected official in Texas, California, and Oklahoma (who exactly in Oklahoma will be resolved by Jim Detlefs in consultation with the Oklahoma State Auditor).
- The 10 States with delegated audit authority will be mentioned in the letter and listed in an attachment.
- We will not include an attachment listing time frames for developing standards to support the regulation.
- We will incorporate key dates into the letter versus having an attachment that details all the dates involved in the regulatory process.
- The letter will ask for State contacts by a specific date (two weeks after the date of the letter) and Jim Detlefs will be the focal point for receiving this information.

Other minor changes to the letter were made.

Clare Onstad will send out final draft to team members on 10/28/96. The team will provide Clare with any comments by the following day.

We will try to get the letter issued by 11/1/96. A copy will be given to all team members including a list of everyone who was mailed the letter. The Western Governors Association and STRAC will follow up with States to obtain a contact name.

The membership of the 205 Delegation team will not expand due to the State contact names received, however, we do plan on having subgroups formed to work on standards and these subgroups will probably add additional people.

The letter will mention 4 possible meeting locations for outreach sessions - Denver, Albuquerque, Oakland, and New Orleans. Only 3 outreach sessions will be held and the locations will be determined based on responses from State contacts.

Legislative History:

There were no additional comments on legislative history. Cecelia Williams handed out copies of Executive Order 12866 - Regulatory Planning and Review, a paper defining significant rule and major rule, and Public Law 102-154. These were for the teams information.

Regulation and Standards:

The basic approach that MMS team members would like to follow is to publish broad regulations that are supported by specific standards. If too much detail is included in the regulations, it makes them harder to finish, too lengthy, and almost impossible to finish by our 8/13/97, deadline. Also, it makes changes that are inevitably going to happen more difficult to implement because you would have to change a regulation. Most of the detail will go into the standards. The regulation will be based on the current audit delegation contained in 30 CFR 229. Jim Detlefs will check with MMS management to ensure this approach is acceptable to everyone involved up the chain of command. The State representatives on the team support this approach.

- Sam Wilson handed out an outline of ideas to incorporate into the audit delegation regulations and standards.
- Dave Steiber handed out an outline of ideas to incorporate into the automated verification delegation regulations and standards.
- Bob Prael handed out an outline of ideas to incorporate into the report processing and error correction delegation regulations and standards.

These outlines were quick drafts that do not incorporate everything that has to be done, they are just the starting point for subgroups to work on as we develop the delegation regulation and the delegation standards. In addition, flexibility will have to be added as part of regulations and standards.

Outreach sessions:

The outreach sessions will be a joint effort - MMS and State representatives on the team will make the presentations. We will not turn anyone away from these meetings but they are predominately for States.

The purpose of the outreach sessions are:

Explain the act and what is delegable (some functions are not delegable at this time but a separate arena may pursue adding additional functions).

Explain the three general areas of delegation:

- Accounting/Financial/Reporting

- Inspection (BLM and possibly OMM)
- Automated Verification/Audit

Notification that a 205 delegation team has been formed.

Explanation of the regulatory process with a parallel process to develop standards.

Framework of regulation will be available.

- Regulation will follow audit delegation regulations that currently exist.
- Time frame for developing standards will be available.
- Request for volunteers to help develop standards.
- Flexibility for States in conducting delegated function.

. Funding - Questions will arise at these outreach sessions. There are no answers yet. Examples of questions which need to be researched are:

- What is the criteria for funding? What is the base, what is the minimum, what is the maximum?
- What do we do once we get a petition from a State?
- Do you need separate COTR's for each function?
- Is there flexibility for States to spend money received for one function on another delegated function?

Outreach will be from 3/21/97 - 8/13/97.

Some type of organization will have to be formed to handle changes to standards. This can be similar to STRAC.

Schedules:

Regulation schedule

- Because of the outreach sessions, the AD review will be moved back to mid January (from 12/23 - 24).
- Week of December 16 - hold telecom with 205 delegation team to discuss input from outreach sessions (this input will be provided to everyone prior to the telecom). If needed, we will hold a meeting in January.
- Plan on holding industry briefing during week of January 13.
- Anyone who meets with any group and gives any kind of briefing on the 205 delegation, should document this meeting so that we can show all our outreach actions.

. Subgroups were formed to work on the framework of the regulation:

- Accounting/Financial/Reporting - Bob Prael, Paul Kruse, Maurice Lierz
- Inspection - Sherri Thompson (Jim Detlefs will contact Sherri on this assignment), Jim Carter
- Automated Verification - Dave Steiber, Charles Whitsel and Spencer Reid
- Audit - Sam Wilson, Dave Loomis

The subgroups will communicate as often as possible to start developing framework. By 11/27/96, the subgroups should have the framework developed. On 12/2/96, we will hold a telecom to discuss the regulatory framework that each subgroup has developed.

Develop standards to support regulation

- Outreach will occur between 3/21 and 8/13/97.
- After State outreach sessions, subgroups may have additional volunteers.
- Prior to publishing the proposed regulation, we should have rough outline of standards.

Explanation of major rule:

We do not have an answer yet on whether the 205 delegation rule will be considered a major rule. We do not think it is but we want to verify this so that there are no surprises in the future.

Miscellaneous:

All dates associated with the 205 delegation team (outreach sessions, team meetings) will be put on RMP's corporate calendar in an attempt to avoid conflicting meetings.